

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF PIMA

3
4
5 THE STATE OF ARIZONA,)

6 Plaintiff,)

7 vs.)

NO. CR20124652-002

8 ROBERT P. CORONADO,)

2 CA-CR 2015-0138-PR

9 Defendant.)
-----)

10 BEFORE: THE HONORABLE KENNETH LEE
11 Judge of the Superior Court
12 Division 3

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15 REPORTER'S TRANSCRIPT ON APPEAL

16 CHANGE OF PLEA

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20 OCTOBER 29, 2013

21 TUCSON, ARIZONA

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24 Reported By: ELIZABETH LUMIA, OFFICIAL

25 RMR, Certified Reporter #50392

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A P P E A R A N C E S:

PIMA COUNTY ATTORNEY'S OFFICE

BY: GORDON BENNETT, DEPUTY COUNTY ATTORNEY,
on behalf of the State;

and

BOBBI BERRY, ESQ.

on behalf of the Defendant.

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P R O C E E D I N G S

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THE COURT: First up is State versus Coronado, criminal cause number CR-20124652-002. Would counsel indicate their names, for the record.

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MR. BENNETT: Gordon Bennett on behalf of Faten Barakat-Nice for the State.

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MS. BERRY: Bobbi Berry for Robert Coronado, present, in custody, seated behind me.

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THE COURT: Since we're doing a change of plea, Mr. Coronado, we need to have you raise your right hand to be sworn.

14

(Defendant sworn.)

15

THE COURT: Please state your full name.

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THE DEFENDANT: Robert Phillip Coronado.

17

THE COURT: What is your date of birth?

18

THE DEFENDANT: March 10, of '92.

19

THE COURT: What grade of school did you finish?

20

THE DEFENDANT: Tenth.

21

THE COURT: So you read and understand English?

22

THE DEFENDANT: Yes.

23

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THE COURT: Have you had any sort of medications, drugs, or alcohol within the last 24 hours?

25

THE DEFENDANT: No.

1 THE COURT: It appears you're entering into a
2 plea of guilty to Amended Count One, attempted possession
3 of narcotic drug for sale, Class Three Felony, the drug
4 being cocaine, as well as admitting to a prior felony
5 conviction, is that correct?

6 THE DEFENDANT: Yes.

7 THE COURT: Let me show you the Plea Agreement.
8 It is a five-page document. Is that your signature
9 towards the bottom of the fourth page?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you have a chance to read the
12 entire agreement before signing it?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have a chance to have your attorney
15 explain it to you and to have any questions you may have
16 answered to your satisfaction before signing it?

17 THE DEFENDANT: Yes.

18 THE COURT: Is there anything about the
19 agreement you don't understand?

20 THE DEFENDANT: No.

21 THE COURT: When you read through the document,
22 was there anything missing from the document from what
23 your understanding of the plea to be?

24 THE DEFENDANT: No.

25 THE COURT: When you read through the document,

1 anything extra thrown in there that you don't agree with?

2 THE DEFENDANT: No.

3 THE COURT: Has anyone threatened you or forced
4 you to get you to enter into the plea?

5 THE DEFENDANT: No.

6 THE COURT: Has anyone besides the State made
7 any promises to get you to enter into the plea?

8 THE DEFENDANT: No.

9 THE COURT: It's my understanding you're willing
10 to enter into the plea at this time voluntarily and of
11 your own free will?

12 THE DEFENDANT: Yes.

13 THE COURT: Let me go over the sentencing
14 options to make sure you understand what those are.
15 Under this plea, probation is not available, so the only
16 option the Court has is to place you in prison, do you
17 understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Under this plea, the sentencing
20 ranges include a presumptive term of 6.5 years, with the
21 potential for an aggravated sentence of 16.25 years, so
22 the mitigated and minimum sentences are not available
23 under the plea agreement, do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: With a prison sentence, you'd have

1 to serve at least 85 percent of that term before you
2 would be eligible for any sort of release, then there
3 would be a consecutive term of community supervision
4 equal to approximately one-seventh of that prison
5 sentence, do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: If you violate the terms of that
8 community supervision, that could be revoked and you
9 could be sent back to prison, do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: With a felony conviction you could
12 be fined up to \$150,000 plus an 83 percent surcharge on
13 top of that, do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand you're agreeing to
16 submit to DNA testing as part of this plea?

17 THE DEFENDANT: Yes.

18 THE COURT: You're also agreeing to pay \$250 to
19 the Pima County Anti-Racketeering Fund, do you understand
20 that?

21 THE DEFENDANT: Yes.

22 THE COURT: You're also agreeing to pay a fine
23 of \$2,000 plus surcharges to the State Drug and Gang
24 Enforcement Account, do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you also understand you're
2 agreeing to pay a \$15 assessment to the Technical
3 Registration Fund, do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you also understand you're
6 agreeing that you have no exculpatory information as to
7 any other co-defendants, do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand you're agreeing to
10 have no contact with any victims to the extent there are
11 any?

12 THE DEFENDANT: Yeah.

13 THE COURT: Any other terms I might have
14 overlooked, counsel?

15 MS. BERRY: No.

16 THE COURT: Do you understand all these
17 sentencing possibilities and requirements?

18 THE DEFENDANT: Yes.

19 THE COURT: Other than what we've talked about
20 this morning, do you have any additional agreement with
21 the State as to what your actual sentence will be?

22 THE DEFENDANT: No.

23 THE COURT: Are you currently on probation or
24 parole?

25 THE DEFENDANT: No.

1 THE COURT: Do you understand that once I accept
2 your plea, you'll not be able to change your mind and
3 withdraw from the plea unless you can demonstrate to the
4 Court that it's necessary to correct some sort of
5 manifest injustice, do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that by pleading
8 guilty you're giving up certain Constitutional rights?

9 THE DEFENDANT: Yes.

10 THE COURT: Those rights include your right to
11 remain silent, your privilege against self-incrimination,
12 and your right to refuse to testify, you're giving up
13 your right to a trial by jury, where you would be
14 represented by counsel, you're giving up your right to
15 confront and cross-examine witnesses the State would call
16 against you, you're giving up your right to subpoena
17 witnesses to compel them to come to court to testify for
18 you, you're giving up your right to present other
19 evidence at the time of trial on your own behalf, as well
20 as to testify at trial should you choose to do so, you're
21 giving up the presumption that you're innocent until
22 proven guilty beyond a reasonable doubt, and you're
23 giving up the right to file an appeal.

24 In addition though these trial rights, you're
25 also giving up certain rights with respect to the finding

1 of aggravating factors for sentencing. First off, you're
2 agreeing to waive your right to a jury trial on the
3 finding of aggravating factors, you're agreeing to reduce
4 the burden of proof the State carries in terms of proving
5 aggravating factors from beyond a reasonable doubt down
6 to a preponderance of the evidence, and finally you're
7 agreeing to waive the application of the Rules of
8 Evidence with respect to what sort of information the
9 Court can consider for the finding of aggravating
10 factors.

11 Do you understand you've got all these rights,
12 and by pleading guilty this morning you're giving up all
13 these rights?

14 THE DEFENDANT: Yes.

15 THE COURT: And you wish to do so now?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that by pleading
18 guilty your only right to seek a review of these
19 proceedings is to file a Petition for Post-Conviction
20 Relief, and if that petition is denied you can seek
21 review to the appellate court, and such review may or may
22 not be granted, do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: You're charged with Amended Count
25 One, attempted possession of a narcotic drug for sale, a

1 Class Three Felony, that being cocaine. How do you
2 plead, guilty or not guilty?

3 THE DEFENDANT: Guilty.

4 THE COURT: So on December 9, 2012, in Pima
5 County, you were trying to sell some cocaine?

6 THE DEFENDANT: Yeah.

7 THE COURT: And you knew that the substance you
8 were trying to sell was cocaine?

9 THE DEFENDANT: Yeah.

10 THE COURT: Any objection to incorporating the
11 grand jury transcript as part of the factual basis?

12 MS. BERRY: No, Your Honor.

13 THE COURT: Do you also agree that you have a
14 prior criminal conviction, that being in Pima County
15 cause number CR-20100658, the offense was solicitation to
16 possess a narcotic drug, also possession of drug
17 paraphernalia, is that also correct?

18 THE DEFENDANT: Yeah.

19 THE COURT: Any additional factual basis either
20 counsel thinks is appropriate?

21 MR. BENNETT: No, Your Honor, thank you.

22 MS. BERRY: Judge, I just want to make a record
23 for procedural purposes only that has nothing to do with
24 the factual basis of the change of plea, if the Court
25 would permit me to do so?

1 THE COURT: Sure.

2 MS. BERRY: When I was retained to represent Mr.
3 Coronado, he had a plea on the table of 5, 10, 12.5, so 5
4 to 12.5. The State alleged two priors against him, and
5 there was also an allegation of committing the offense
6 while on probation. He had a co-defendant in the case
7 that also had two priors, also was on probation, who was
8 offered 2 to 8.75, who took his plea and received a 3-1/2
9 year sentence. That co-defendant had 21.296 grams of
10 cocaine. In this case, Mr. Coronado had 11.864 grams of
11 cocaine. Both defendants, given their criminal history,
12 were similarly situated.

13 I advised at the time that I was retained by
14 Mr. Coronado that he not accept the plea because I didn't
15 have complete disclosure, primarily a lab report. I
16 refused to make a Donald record on the case because of
17 lack of disclosure. The plea was withdrawn by the County
18 Attorney's Office.

19 We went through a settlement conference, and
20 this was in front of Judge Fell, where Judge Fell
21 basically, for lack of a better term, chastised Ms.
22 Barakat for the lack of parity in the treatment of these
23 co-defendants and their standing or the county attorney's
24 position on the plea agreement. At that point in time,
25 we had a starting point of 9-1/4 years for Mr. Coronado.

1 Neither of Mr. Coronado's prior offenses are violent in
2 nature. In fact, I think they were both either six opens
3 or class six felonies, low-end felonies, nonviolent in
4 nature. The plea that I got was the one that was
5 extended and accepted by the Court today, starting at
6 6-1/2 years.

7 My frustration is that Mr. Coronado is in such a
8 worse position than he was initially based on my advice
9 to him concerning lack of disclosure, and then the
10 subsequent withdrawal of the plea agreement by the County
11 Attorney's Office. If he were to go to trial and lose,
12 he would be looking at a minimum of 15-3/4 years. We
13 can't do that. But I did want to make a record that the
14 plea that was accepted today, the plea that was
15 essentially not accepted at the earlier stages of
16 Mr. Coronado's case was based on my advice concerning
17 proper legal practice and essentially receiving
18 appropriate disclosure before I apprised my client of the
19 plea.

20 All that being said, I guess I wanted to make
21 the record for purposes of any potential Rule 32's down
22 the pike. Like I said, Mr. Coronado has been acting
23 based on my advice. He's never disputed the fact that he
24 wanted a plea. We've been negotiating all along. We
25 didn't reject the plea. We made an appropriate record

1 concerning our not wanting to make a Donald record. In
2 fact, I think that was done in front of Judge Godoy.

3 Beyond that, I don't have an additional record
4 to make, Your Honor.

5 THE COURT: Well, let me ask you, Mr. Coronado,
6 given the statements of your counsel, do you want to
7 still go through with this plea?

8 THE DEFENDANT: No.

9 THE COURT: You don't want to go through with
10 the plea?

11 THE DEFENDANT: No.

12 MS. BERRY: You'd rather go to trial? If I
13 could have a second?

14 THE COURT: Sure.

15 THE DEFENDANT: Yeah, I'll do it.

16 THE COURT: You want to go through with the
17 plea?

18 THE DEFENDANT: Yeah.

19 THE COURT: The Court finds that the defendant's
20 plea is made knowingly, intelligently and voluntarily
21 made, there's a factual basis for it. The Court accepts
22 the plea, enters it as of the record.

23 A Presentence Report is ordered. Release
24 conditions are revoked given it's a prison-only plea.

25 We need to set a sentencing date. Any date that

1 works better or worse for you?

2 MS. BERRY: Judge, we would like it within the
3 time, so maybe the 29th of November.

4 THE COURT: Actually, that is now declared an
5 official county holiday. They took away Columbus Day and
6 gave us Black Friday.

7 MS. BERRY: I didn't know that. How about the
8 Thursday preceding that, the 28th?

9 THE COURT: If you want to be here on
10 Thanksgiving. How about the 27th?

11 MS. BERRY: Fine.

12 THE COURT: We'll set sentencing for Wednesday,
13 the 27th, 9:00, this division.

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16 (WHEREUPON, the proceedings were adjourned.)

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C E R T I F I C A T E

STATE OF ARIZONA)
)
COUNTY OF PIMA) SS

I do hereby certify that I was present at the hearing of the foregoing entitled case; that while there I took down in shorthand all the oral testimony adduced and/or proceedings had; that I have transcribed the shorthand into typewriting, and that the foregoing typewritten matter contains a true and correct transcript of my shorthand notes so taken by me as aforesaid.

Elizabeth Lumia, RMR
Certified Court Reporter #50392
Pima County